IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VERA WILBURGER SANZO, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 00-2534
ELK MOUNTAIN SKI RESORT, INC., and JOSEPH P. MOORE, JR., Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J. SEPTEMBER 28, 2000

Before this Court are the Motions to Dismiss or Stay the Proceedings filed by Defendants Elk Mountain Ski Resort, Inc. ("Elk Mountain") and Joseph P. Moore, Jr. ("Mr. Moore"). Plaintiff Vera Wilburger Sanzo ("Mrs. Sanzo"), a shareholder of Elk Mountain, sued Elk Mountain and Mr. Moore, its president, for the following: (1) declaratory judgment and injunctive relief against both defendants; (2) breach of fiduciary duty against Mr. Moore only; (3) tortious interference with contractual relations against Mr. Moore only; and (4) civil conspiracy against Mr. Moore only. For the reasons that follow, this action is stayed until resolution of the pending action in the Montgomery Court of Common Pleas captioned as Moore Motors, Inc., et al. v. Beaudry, et al., Number 00-04728.

I. BACKGROUND.

Mrs. Sanzo, along with her sister and brother-in-law,

Rose Wilburger Beaudry and Gerard J. Beaudry ("the Beaudrys"), own a block of 29,000 shares of Elk Mountain stock.[1] They received an offer from Thomas Karam ("Mr. Karam"), a non-shareholder, to purchase no less than all of their combined shares for $2,100,000.00. This amount of shares would give Mr. Karam enough interest in Elk Mountain to enable him to elect two of its directors.

Elk Mountain's bylaws contain a right of first refusal provision whereby a shareholder must first offer any shares she is contemplating selling to the corporation. If the corporation does not buy the shares, the shareholders have the opportunity to purchase those shares. Elk Mountain declined to buy the proffered shares. However, three individual shareholders, Moore Motors, Inc., which is a company owned by Mr. Moore, and Anne Wilcox and Elizabeth Mahoney, who are Mr. Moore's daughters, (collectively hereinafter "the individual shareholders"), offered to buy a total of 8100 of the proffered shares, each purchasing up to an amount of shares proportionate to its or her ownership of the corporation, as allegedly permitted by the bylaws. Mrs. Sanzo and the Beaudrys refused these offers, stating that their offer was conditioned on the sale of all 29,000 shares or

[1] Of the 29,000 shares, Mrs. Sanzo and Mrs. Beaudry each own 13,000 shares, and Mr. Beaudry owns 3,000 shares.

nothing.[2] Mrs. Sanzo and the Beaudrys then accepted Mr. Karam's offer; however, title to the shares has not yet been transferred to Mr. Karam. Instead, the individual shareholders filed suit against Mrs. Sanzo and the Beaudrys in the Court of Common Pleas of Montgomery County, Pennsylvania, seeking an order declaring that Mrs. Sanzo and the Beaudrys must transfer 8100 shares to them. Mr. Moore and Elk Mountain are not parties to the state litigation. However, Elk Mountain has indicated it will not register title to the shares until a determination of title has been made by the state court.

Approximately eight weeks after the state court suit was filed, Mrs. Sanzo, without the Beaudrys, filed this case against Mr. Moore and Elk Mountain seeking declaratory relief and an injunction, essentially to force Elk Mountain to register the shares to Mr. Karam. She also alleged that Mr. Moore orchestrated the individual shareholder's efforts to force Mrs. Sanzo to transfer 8100 shares of stock to them. The only basis for jurisdiction in this case is diversity, since all the claims are under state law. Mrs. Sanzo did not join the Beaudrys as plaintiffs in this case. Their presence would have destroyed diversity. Moreover, the individual shareholders are not named defendants in this case.

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[2] Selling only 8100 shares would divest Mrs. Sanzo and the Beaudrys of the ability to elect two Elk Mountain directors.

II. DISCUSSION.

A. Declaratory Judgment.

In Count I of her Complaint, Mrs. Sanzo requests a judgment against Mr. Moore and Elk Mountain declaring that she is entitled to transfer her 13,000 Elk Mountain shares to Mr. Karam, and an order directing Elk Mountain to register the shares in Mr. Karam's name. (Compl. at p. 12). Elk Mountain and Mr. Moore have moved to dismiss this action or to stay it pending resolution of the state court action.

The Declaratory Judgment Act provides

> In a case of actual controversy within its jurisdiction . . . any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201.

Where parallel state proceedings present the opportunity to adjudicate the same state law issues as those presented in an action for declaratory judgment, a district court acts within its discretion in staying the action. Wilton v. Seven Falls Co., 515 U.S. 277 (1995)). In Wilton, the United States Supreme Court examined the "unique breadth of a district court's discretion to decline to enter a declaratory judgment." Id. at 287. The court explained that

Since its inception, the Declaratory Judgment Act has

> been understood to confer on federal courts unique and substantial discretion in deciding wether to declare the rights of litigants. On its face, the statute provides that a court "may declare the rights and other legal relations of any interested party seeking such declaration,". . . . The statute's textual commitment to discretion, and the breadth of leeway we have always understood it to suggest, distinguish the declaratory judgment context from other areas of the law in which concepts of discretion surface . . . . We have recently characterized the Declaratory Judgment Act as "an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant,". . . . When all is said and done, we have concluded, "the propriety of declaratory relief in a particular case will depend upon a circumspect sense of its fitness informed by the teachings and experience concerning the functions and extent of federal judicial power."
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> [T]here is nothing automatic . . . or obligatory about the assumption of "jurisdiction" by a federal court to hear a declaratory judgment action . . . . By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's quiver; it created an opportunity, rather than a duty to grant a new form of relief to qualifying litigants. Consistent with the nonobligatory nature of the remedy, a district court is authorized, in the sound exercise of its discretion, to stay or dismiss an action seeking a declaratory judgment before trial or after all arguments have drawn to a close. In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.

Id. at 287-288.

When a declaratory judgment is sought while a similar state action is pending, district courts should look disfavorably upon "any attempt to circumvent the laudable purposes of the [Declaratory Judgment] Act, and seek to prevent the use of the

declaratory action as a method of procedural fencing, or as a means to provide another forum in a race for res judicata." Terra Nova Ins. Co., Ltd. v. 900 Bar, Inc., 887 F.2d 1213, 1225 (3d Cir. 1989)(citation omitted). The district court should consider whether the issues being decided in the state court are similar enough that it would be indulging in "gratuitous interference" if it allowed the matter to proceed, and "whether the questions or controversy between the parties to the federal suit . . . can be better settled in the proceeding pending in the state court." Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 495 (1942).

In Brillhart, the United States Supreme Court instructed that, in considering whether to decline to exercise jurisdiction over a declaratory judgment action where a parallel state action is pending, a district court should "ascertain whether the questions in controversy between the parties to the federal suit[] . . . can be better settled in the proceeding pending in state court[]", assess "the scope of the pending state proceeding and the nature of the defenses open there []," and evaluate "whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, [and] whether such parties are amenable to process in that proceeding, etc." NYLife Distrib., Inc. v. The Adherence Group, Inc., 72 F.3d 371, 377 (3d

Cir. 1996)(citing Brillhart, 316 U.S. at 495.)

In addition to the factors set forth in Brillhart, in Terra Nova, the United States Court of Appeals for the Third Circuit set forth the following factors for a court to consider in deciding whether to exercise discretion under the Declaratory Judgment Act: (1) the likelihood that the declaration will resolve the uncertainty of obligation which gave rise to the controversy; (2) the convenience of the parties; (3) the public interest in settlement of the uncertainty of the obligation; and (4) the availability and relative convenience of other remedies. Id. at 1224.[3]

In the instant case, Mrs. Sanzo's declaratory action and the state action both necessitate an interpretation of the Elk Mountain bylaws. Specifically, this Court is being asked to find that Mrs. Sanzo complied with the right of first refusal provision, and is therefore entitled to transfer her shares to Mr. Karam. However, the interpretation of the bylaws is also the subject of the pending state action in which the court is being asked to rule that the individual shareholders made a permissible

[3] Although Terra Nova was decided before Wilton, courts in this circuit have held that it survives Wilton since appears to have anticipated Wilton, and is consistent with its rationale. See Nationwide Mut. Ins. Co. v. Lowe, 95 F.Supp.2d 274, 275 n.2 (E.D.Pa. 2000);(Nationwide Mut. Fire Co. v. Shank, 951 F. Supp. 68, 70 (E.D.Pa. 1997);(Aetna v. U.S. Healthcare, Inc. v. Columbia Cas. Co., No.Civ.A. 99-596, 1999 WL 624509, at *2 (E.D.Pa. Aug. 6, 1999).

offer under the bylaws and are therefore entitled to have Mrs. Sanzo's and the Beaudrys' shares transferred to them.

Moreover, the state court has before it the parties necessary to make the requested interpretation of the bylaws and the status of the shares, namely, Plaintiff, the Beaudrys and the individual shareholders. Although Elk Mountain and Mr. Moore are not parties to the state court action, the only impediment to Mrs. Sanzo's ability to transfer her shares are the claims asserted to them by the individual shareholders. The state court's decision will determine entitlement to the shares. Accordingly, the state action provides Mrs. Sanzo with another available, convenient remedy. As such, we exercise the discretion bestowed upon us by the Declaratory Judgment Act and by the United States Supreme Court in Brillhart and Wilton to stay Mrs. Sanzo's claim for declaratory relief pending the resolution of the state court action.[4] See Wilton, 515 U.S. at 289 (holding that district court acted within its bounds in staying declaratory action where parallel proceedings, presenting opportunity for ventilation of the same state law issues

[4] As the Supreme Court has advised, under these circumstances, a stay of the action is favored over an outright dismissal. "[W]here the basis for declining to proceed is the pendency of a state proceeding, a stay will often be the preferable course, because it assures that the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the matter in controversy." Wilton v. Seven Falls Co., 515 U.S. 277 , 288 n. 2 (1995)(citation omitted).

regarding scope of insurance coverage, were underway in state court); In re Texas Eastern Transmission Corp. PCB Contamination Ins. Coverage Litig., No. Civ.A. 92-4804, 1997 WL 164256 (E.D.Pa. Apr.9, 1997)(holding stay of declaratory judgment action pending state court resolution of same state law claims regarding insurance coverage was appropriate under Brillhart and Wilton); Home Insurance Co. v. Perlberger, 900 F.Supp. 768 (E.D.Pa. 1995)(interpreting Brillhart and Wilton and staying declaratory judgment action, even where parties and issues were not identical, due to potential preclusive effect of interpretation of insurance policy on state action).

B. Injunctive Relief.

Reading Wilton as endowing district courts with broad discretion only in actions for declaratory relief, Mrs. Sanzo argues that this Court does not have discretion to stay her claims because she seeks injunctive relief in addition to declaratory relief. Rather, she argues that the abstention principles of Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) and Moses H. Cone Mem'l Hosp. V. Mercury Constr. Corp., 460 U.S. 1 (1983) "continue to limit a federal court's discretion to decline to exercise jurisdiction over claims for injunctive relief." (Pl.'s Opp'n Moore's Mot. Dismiss at 14). In Colorado River, the United States Supreme Court held that a federal court could decline to exercise

jurisdiction because of a pending state court action only in "exceptional circumstances." Colorado River, 424 U.S. at 818. The Court set forth the following factors for district courts to consider in deciding whether to decline to exercise jurisdiction: (1) whether the state court has assumed in rem jurisdiction over property at issue; (2) the inconvenience of the federal forum; (3) the order in which jurisdiction was obtained; (4) the desirability of avoiding piecemeal litigation; (5) which forum's substantive law governs the merits of the case; and (6) the adequacy of the state forum to protect the parties' rights. Id.

At the outset, we note that this case, in fact, does not appear to be "at heart an injunction case" as Mrs. Sanzo asserts, but clearly seeks a declaration regarding the bylaws and the status of Mrs. Sanzo's shares. Indeed, it is the declaratory judgment which would afford Mrs. Sanzo complete, permanent relief. It would seem unfitting for a litigant to circumvent the broad discretion endowed upon federal courts by the Supreme Court in Wilton in the declaratory judgment context simply by inserting the word "injunction" in the complaint. Moreover, it is unclear whether Brillhart and Wilton apply solely to cases in which the only claim is for declaratory relief.[5] In any event, a stay of

[5] Mrs. Sanzo relies upon Wilton v. Seven Falls Co. et al., 515 U.S. 277 (1995), for the this proposition. However, Wilton merely held that Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, does not apply to cases, where, unlike here, there is no claim for declaratory judgment. In those cases, the

this case is appropriate even under Colorado River. While this is not an in rem proceeding, and inconvenience to the parties does not appear to be an issue, the remaining four factors recommend a stay of this action. The state court obtained jurisdiction first. All of Mrs. Sanzo's claims are under state law. Despite Mrs. Sanzo's insistence to the contrary, the subject of this action is essentially identical to the subject of the state action, both revolving around the proper interpretation of the right of first refusal provision; therefore, there is the strong potential for piecemeal litigation. Moreover, and significantly, the state court provides an adequate forum for Mrs. Sanzo's claims. While she asserts that she cannot obtain complete relief in the state court because Mr. Moore and Elk Mountain are not parties to that action, as stated above, the only obstacle preventing Mrs. Sanzo from transferring her shares to Mr. Karam are the individual shareholders' claims to them. Once the state court interprets the right of first refusal provision, entitlement to the shares will be determined. As such, we may properly exercise our discretion to stay Mrs.

"exceptional circumstances" standard of Colorado River Water Conservation Dist. v. United States continues to apply. Wilton, 515 U.S. at 285. Mrs. Sanzo's reliance on Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213 (3d Cir. 1989) is equally tenuous. In Terra Nova, the Third Circuit merely emphasized the distinction between a district court's discretion in staying actions involving a declaratory judgment as opposed to actions in which there is a parallel state proceeding but no claim for declaratory judgment.

Sanzo's claim for injunctive relief, even assuming Mrs. Sanzo is correct that such discretion is restricted in this case by Colorado River.[6]

An appropriate Order follows.

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Plaintiff,	:	

[6] Before the Motions to Dismiss were filed, Mrs. Sanzo filed a Motion for Summary Judgment on Count I of her Complaint. Because this action is stayed pending resolution of the state action, Mrs. Sanzo's Motion for Summary Judgment is denied without prejudice.

v.	:	NO. 00-2534
	:	
ELK MOUNTAIN SKI RESORT, INC., and JOSEPH P. MOORE, JR.,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this day of September, 2000, it is HEREBY ORDERED that all proceedings in this action are STAYED pending entry of a final judgment in the Montgomery County, Pennsylvania action captioned as Moore Motors, Inc., et al. v. Beaudry, et al., No. 00-04728. It is FURTHER ORDERED that Mrs. Sanzo's Motion for Summary Judgment on Count I of the Complaint is DENIED WITHOUT PREJUDICE.

BY THE COURT:

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Robert F. Kelly, J.